

ASSEMBLY BILL

No. 1438

Introduced by Assembly Member Linder

January 6, 2014

An act to amend Sections 290.5 and 4852.01 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1438, as introduced, Linder. Sex offenders: certificates of rehabilitation.

Existing law requires a person who has been convicted of specified sex offenses to register with local law enforcement authorities as a sex offender. Existing law authorizes a person convicted of a felony or a misdemeanor violation of certain sex offenses, the accusatory pleading of which has been dismissed, to file a petition for certificate of rehabilitation and pardon provided that the petitioner has not been incarcerated since the dismissal of the accusatory pleading, is not on probation for the commission of another felony, and presents satisfactory evidence of 5 years residence in this state prior to the filing of the petition. Under existing law, a petition for a certificate of rehabilitation and pardon does not apply to a person who, among other specified crimes, has been convicted of willfully and lewdly committing any lewd and lascivious act upon the body of a child who is under the age of 14. Under existing law, a person convicted of certain sex offenses is not, upon obtaining a certificate of rehabilitation, relieved of his or her duty to register as a sex offender.

This bill, in addition, would make the provisions for obtaining a certificate of rehabilitation inapplicable to a person who is convicted of engaging in sexual intercourse, sodomy, oral copulation, or sexual

penetration with a child who is 10 years of age or younger and would provide that such a person who has obtained a certificate of rehabilitation is not relieved of his or her duty to register as a sex offender.

Because certain sex offenders would be precluded from relief from the duty to register with local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 290.5 of the Penal Code is amended to
2 read:
3 290.5. (a) (1) A person required to register under Section 290
4 for an offense not listed in paragraph (2), upon obtaining a
5 certificate of rehabilitation under Chapter 3.5 (commencing with
6 Section 4852.01) of Title 6 of Part 3, shall be relieved of any
7 further duty to register under Section 290 if he or she is not in
8 custody, on parole, or on probation.
9 (2) A person required to register under Section 290, upon
10 obtaining a certificate of rehabilitation under Chapter 3.5
11 (commencing with Section 4852.01) of Title 6 of Part 3, shall not
12 be relieved of the duty to register under Section 290, or of the duty
13 to register under Section 290 for any offense subject to that section
14 of which he or she is convicted in the future, if his or her conviction
15 is for one of the following offenses:
16 (A) Section 207 or 209 committed with the intent to violate
17 Section 261, 286, 288, 288a, or 289.
18 (B) Section 220, except assault to commit mayhem.
19 (C) Section 243.4, provided that the offense is a felony.
20 (D) Paragraph (1), (2), (3), (4), or (6) of subdivision (a) of
21 Section 261.
22 (E) Section 264.1.
23 (F) Section 266, provided that the offense is a felony.
24 (G) Section 266c, provided that the offense is a felony.

1 (H) Section 266j.

2 (I) Section 267.

3 (J) Section 269.

4 (K) Paragraph (1) of subdivision (b) of Section 286, provided
5 that the offense is a felony.

6 (L) Paragraph (2) of subdivision (b) of, or subdivision (c), (d),
7 (f), (g), (i), (j), or (k) of, Section 286.

8 (M) Section 288.

9 (N) Paragraph (1) of subdivision (b) of Section 288a, provided
10 that the offense is a felony.

11 (O) Paragraph (2) of subdivision (b) of, or subdivision (c), (d),
12 (f), (g), (i), (j), or (k) of, Section 288a.

13 (P) Section 288.5.

14 (Q) Section 288.7.

15 ~~(Q)~~

16 (R) Subdivision (a), (b), (d), (e), (f), (g), or (h) of Section 289,
17 provided that the offense is a felony.

18 ~~(R)~~

19 (S) Subdivision (i) or (j) of Section 289.

20 ~~(S)~~

21 (T) Section 647.6.

22 ~~(T)~~

23 (U) The attempted commission of any of the offenses specified
24 in this paragraph.

25 ~~(U)~~

26 (V) The statutory predecessor of any of the offenses specified
27 in this paragraph.

28 ~~(V)~~

29 (W) Any offense which, if committed or attempted in this state,
30 would have been punishable as one or more of the offenses
31 specified in this paragraph.

32 (b) (1) Except as provided in paragraphs (2) and (3), a person
33 described in paragraph (2) of subdivision (a) shall not be relieved
34 of the duty to register until that person has obtained a full pardon
35 as provided in Chapter 1 (commencing with Section 4800) or
36 Chapter 3 (commencing with Section 4850) of Title 6 of Part 3.

37 (2) This subdivision does not apply to misdemeanor violations
38 of Section 647.6.

39 (3) The court, upon granting a petition for a certificate of
40 rehabilitation pursuant to Chapter 3.5 (commencing with Section

1 4852.01) of Title 6 of Part 3, if the petition was granted prior to
2 January 1, 1998, may relieve a person of the duty to register under
3 Section 290 for a violation of Section 288 or 288.5, provided that
4 the person was granted probation pursuant to subdivision ~~(e)~~ (d)
5 of Section 1203.066, has complied with the provisions of Section
6 290 for a continuous period of at least 10 years immediately
7 preceding the filing of the petition, and has not been convicted of
8 a felony during that period.

9 SEC. 2. Section 4852.01 of the Penal Code is amended to read:

10 4852.01. (a) Any person convicted of a felony who has been
11 released from a state prison or other state penal institution or
12 agency in California, whether discharged on completion of the
13 term for which he or she was sentenced or released on parole prior
14 to May 13, 1943, who has not been incarcerated in a state prison
15 or other state penal institution or agency since his or her release
16 and who presents satisfactory evidence of a three-year residence
17 in this state immediately prior to the filing of the petition for a
18 certificate of rehabilitation and pardon provided for by this chapter,
19 may file the petition pursuant to the provisions of this chapter.

20 (b) Any person convicted of a felony who, on May 13, 1943,
21 was confined in a state prison or other institution or agency to
22 which he or she was committed and any person convicted of a
23 felony after that date who is committed to a state prison or other
24 institution or agency may file a petition for a certificate of
25 rehabilitation and pardon pursuant to the provisions of this chapter.

26 (c) Any person convicted of a felony or any person who is
27 convicted of a misdemeanor violation of any sex offense specified
28 in Section 290, the accusatory pleading of which has been
29 dismissed pursuant to Section 1203.4, may file a petition for
30 certificate of rehabilitation and pardon pursuant to the provisions
31 of this chapter if the petitioner has not been incarcerated in any
32 prison, jail, detention facility, or other penal institution or agency
33 since the dismissal of the accusatory pleading and is not on
34 probation for the commission of any other felony, and the petitioner
35 presents satisfactory evidence of five years residence in this state
36 prior to the filing of the petition.

37 (d) This chapter shall not apply to persons serving a mandatory
38 life parole, persons committed under death sentences, persons
39 convicted of a violation of subdivision (c) of Section 286, Section

1 288, subdivision (c) of Section 288a, Section 288.5, *Section 288.7*,
2 or subdivision (j) of Section 289, or persons in the military service.

3 (e) Notwithstanding ~~the above provisions or any other provision~~
4 ~~of law~~, the Governor ~~shall have~~ *has* the right to pardon a person
5 convicted of a violation of subdivision (c) of Section 286, Section
6 288, subdivision (c) of Section 288a, Section 288.5, *Section 288.7*,
7 or subdivision (j) of Section 289, if there are extraordinary
8 circumstances.

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.